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HOUSE BILL 57

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO LIQUOR EXCISE TAXES; AUTHORIZING EACH COUNTY TO IMPOSE A LOCAL LIQUOR SURTAX; LIMITING RATES OF LOCAL LIQUOR SURTAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;

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- 1 (4) Gross Receipts and Compensating Tax Act
2 and any state gross receipts tax;
- 3 (5) Liquor Excise Tax Act;
- 4 (6) Local Liquor [~~Excise Tax~~] Surtax Act;
- 5 (7) any municipal local option gross receipts
6 tax;
- 7 (8) any county local option gross receipts
8 tax;
- 9 (9) Special Fuels Supplier Tax Act;
- 10 (10) Gasoline Tax Act;
- 11 (11) petroleum products loading fee, which fee
12 shall be considered a tax for the purpose of the Tax
13 Administration Act;
- 14 (12) Alternative Fuel Tax Act;
- 15 (13) Cigarette Tax Act;
- 16 (14) Estate Tax Act;
- 17 (15) Railroad Car Company Tax Act;
- 18 (16) Investment Credit Act, rural job tax
19 credit, Laboratory Partnership with Small Business Tax Credit
20 Act, Technology Jobs Tax Credit Act, film production tax
21 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
22 Credit Act, high-wage jobs tax credit and Research and
23 Development Small Business Tax Credit Act;
- 24 (17) Corporate Income and Franchise Tax Act;
- 25 (18) Uniform Division of Income for Tax

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1 Purposes Act;

2 (19) Multistate Tax Compact;

3 (20) Tobacco Products Tax Act; and

4 (21) the telecommunications relay service

5 surcharge imposed by Section 63-9F-11 NMSA 1978, which

6 surcharge shall be considered a tax for the purposes of the Tax

7 Administration Act;

8 B. the administration and enforcement of the
9 following taxes, surtaxes, advanced payments or tax acts as
10 they now exist or may hereafter be amended:

11 (1) Resources Excise Tax Act;

12 (2) Severance Tax Act;

13 (3) any severance surtax;

14 (4) Oil and Gas Severance Tax Act;

15 (5) Oil and Gas Conservation Tax Act;

16 (6) Oil and Gas Emergency School Tax Act;

17 (7) Oil and Gas Ad Valorem Production Tax Act;

18 (8) Natural Gas Processors Tax Act;

19 (9) Oil and Gas Production Equipment Ad

20 Valorem Tax Act;

21 (10) Copper Production Ad Valorem Tax Act;

22 (11) any advance payment required to be made

23 by any act specified in this subsection, which advance payment

24 shall be considered a tax for the purposes of the Tax

25 Administration Act;

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1 (12) Enhanced Oil Recovery Act;

2 (13) Natural Gas and Crude Oil Production

3 Incentive Act; and

4 (14) intergovernmental production tax credit
5 and intergovernmental production equipment tax credit;

6 C. the administration and enforcement of the
7 following taxes, surcharges, fees or acts as they now exist or
8 may hereafter be amended:

9 (1) Weight Distance Tax Act;

10 (2) the workers' compensation fee authorized
11 by Section 52-5-19 NMSA 1978, which fee shall be considered a
12 tax for purposes of the Tax Administration Act;

13 (3) Uniform Unclaimed Property Act (1995);

14 (4) 911 emergency surcharge and the network
15 and database surcharge, which surcharges shall be considered
16 taxes for purposes of the Tax Administration Act;

17 (5) the solid waste assessment fee authorized
18 by the Solid Waste Act, which fee shall be considered a tax for
19 purposes of the Tax Administration Act;

20 (6) the water conservation fee imposed by
21 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
22 for the purposes of the Tax Administration Act; and

23 (7) the gaming tax imposed pursuant to the
24 Gaming Control Act; and

25 D. the administration and enforcement of all other

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1 laws, with respect to which the department is charged with
2 responsibilities pursuant to the Tax Administration Act, but
3 only to the extent that the other laws do not conflict with the
4 Tax Administration Act."

5 Section 2. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
6 Chapter 211, Section 20, as amended) is amended to read:

7 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
8 MUNICIPALITIES OR COUNTIES.--

9 A. The provisions of this section apply to:

10 (1) any distribution to a municipality of
11 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or
12 of interstate telecommunications gross receipts tax pursuant to
13 Section 7-1-6.36 NMSA 1978;

14 (2) any transfer to a municipality with
15 respect to any local option gross receipts tax imposed by that
16 municipality;

17 (3) any transfer to a county with respect to
18 any local option gross receipts tax imposed by that county;

19 (4) any distribution to a county pursuant to
20 Section 7-1-6.16 NMSA 1978;

21 (5) any distribution to a municipality or a
22 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

23 (6) any transfer to a county with respect to
24 any tax imposed in accordance with the Local Liquor [~~Excise~~
25 ~~Tax~~] Surtax Act;

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1 (7) any distribution to a municipality or a
2 county of cigarette taxes pursuant to Sections 7-1-6.11,
3 7-12-15 and 7-12-16 NMSA 1978;

4 (8) any distribution to a county from the
5 county government road fund pursuant to Section 7-1-6.26 NMSA
6 1978;

7 (9) any distribution to a municipality of
8 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

9 (10) any distribution to a municipality of
10 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

11 B. If the secretary determines that any prior
12 distribution or transfer to a political subdivision was
13 erroneous, the secretary shall increase or decrease the next
14 distribution or transfer amount for that political subdivision
15 after the determination, except as provided in Subsection C, D
16 or E of this section, by the amount necessary to correct the
17 error. Subject to the provisions of Subsection E of this
18 section, the secretary shall notify the political subdivision
19 of the amount of each increase or decrease.

20 C. No decrease shall be made to current or future
21 distributions or transfers to a political subdivision for any
22 excess distribution or transfer made to that political
23 subdivision more than one year prior to the calendar year in
24 which the determination of the secretary was made.

25 D. The secretary, in lieu of recovery from the next

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1 distribution or transfer amount, may recover an excess
2 distribution or transfer of one hundred dollars (\$100) or more
3 to the political subdivision in installments from current and
4 future distributions or transfers to that political subdivision
5 pursuant to an agreement with the officials of the political
6 subdivision whenever the amount of the distribution or transfer
7 decrease for the political subdivision exceeds ten percent of
8 the average distribution or transfer amount for that political
9 subdivision for the twelve months preceding the month in which
10 the secretary's determination is made; provided that for the
11 purposes of this subsection, the "average distribution or
12 transfer amount" shall be the arithmetic mean of the
13 distribution or transfer amounts within the twelve months
14 immediately preceding the month in which the determination is
15 made.

16 E. Except for the provisions of this section, if
17 the amount by which a distribution or transfer would be
18 adjusted pursuant to Subsection B of this section is one
19 hundred dollars (\$100) or less, no adjustment or notice need be
20 made.

21 F. The secretary is authorized to decrease a
22 distribution to a municipality or county upon being directed to
23 do so by the secretary of finance and administration pursuant
24 to the State Aid Intercept Act or to redirect a distribution to
25 the New Mexico finance authority pursuant to an ordinance or a

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1 resolution passed by the county or municipality and a written
2 agreement of the municipality or county and the New Mexico
3 finance authority. Upon direction to decrease a distribution
4 or notice to redirect a distribution to a municipality or
5 county, the secretary shall decrease or redirect the next
6 designated distribution, and succeeding distributions as
7 necessary, by the amount of the state distributions intercept
8 authorized by the secretary of finance and administration
9 pursuant to the State Aid Intercept Act or by the amount of the
10 state distribution intercept authorized pursuant to an
11 ordinance or a resolution passed by the county or municipality
12 and a written agreement with the New Mexico finance authority.
13 The secretary shall transfer the state distributions intercept
14 amount to the municipal or county treasurer or other person
15 designated by the secretary of finance and administration or to
16 the New Mexico finance authority pursuant to written agreement
17 to pay the debt service to avoid default on qualified local
18 revenue bonds or meet other local revenue bond, loan or other
19 debt obligations of the municipality or county to the New
20 Mexico finance authority."

21 Section 3. Section 7-24-8 NMSA 1978 (being Laws 1989,
22 Chapter 326, Section 1, as amended) is amended to read:

23 "7-24-8. SHORT TITLE.--Sections 7-24-8 through 7-24-16
24 NMSA 1978 may be cited as the "Local Liquor [~~Excise Tax~~] Surtax
25 Act"."

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1 Section 4. Section 7-24-9 NMSA 1978 (being Laws 1989,
2 Chapter 326, Section 2) is amended to read:

3 "7-24-9. DEFINITIONS.--As used in the Local Liquor
4 [~~Excise Tax~~] Surtax Act:

5 A. "alcoholic beverages" means distilled or
6 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
7 and aromatic bitters or any similar alcoholic beverage,
8 including blended or fermented beverages, dilutions or mixtures
9 of one or more of the foregoing containing more than one-half
10 of one percent alcohol, but excluding medicinal bitters;

11 B. "county" means [~~a class B~~] any county [~~having a~~
12 ~~population of more than fifty-six thousand but less than~~
13 ~~seventy-five thousand, according to the most recent federal~~
14 ~~decennial census or any subsequent decennial census, and having~~
15 ~~a net taxable value for rate-setting purposes for the 1988 or~~
16 ~~any subsequent property tax year of more than five hundred~~
17 ~~million dollars (\$500,000,000) but less than seven hundred~~
18 ~~million dollars (\$700,000,000)] in the state;~~

19 C. "department" means the taxation and revenue
20 department, the secretary of taxation and revenue or any
21 employee of the department exercising authority lawfully
22 delegated to that employee by the secretary;

23 D. "governing body" means the board of county
24 commissioners of a county;

25 E. "person" means any individual, estate, trust,

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1 receiver, cooperative association, club, corporation, company,
2 firm, partnership, joint venture, syndicate or other
3 association; "person" also means, to the extent permitted by
4 law, any federal, state or other governmental unit or
5 subdivision or agency, department or instrumentality thereof;

6 F. "price" means the total amount of money or the
7 reasonable value of other consideration or both paid for
8 alcoholic beverages, inclusive of the amount of any tax paid
9 pursuant to the Liquor Excise Tax Act; ~~and~~

10 G. "retailer" means any person having a place of
11 business within the county who sells, offers for sale or
12 possesses for the purpose of selling alcoholic beverages within
13 the county;

14 H. "surtax" means the local liquor surtax; and

15 I. "wholesaler" means any person that sells
16 alcoholic beverages in unbroken packages to a retailer for
17 resale."

18 Section 5. Section 7-24-10 NMSA 1978 (being Laws 1989,
19 Chapter 326, Section 3) is amended to read:

20 "7-24-10. AUTHORIZATION TO IMPOSE LOCAL LIQUOR ~~[EXCISE~~
21 ~~TAX]~~ SURTAX--RATE--USE OF PROCEEDS--ELECTION REQUIRED.--

22 A. The majority of the members elected to the
23 governing body may enact an ordinance imposing on ~~[any retailer~~
24 ~~an]~~ all wholesalers distributing alcoholic beverages to
25 retailers in the county a local liquor surtax to be paid to the

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1 state in addition to the liquor excise tax [~~on the price paid~~
2 ~~by the retailer for alcoholic beverages purchased by the~~
3 ~~retailer] of up to twenty-five percent of the liquor excise tax
4 due on the sale of the alcoholic beverages distributed by the
5 wholesaler upon which the [~~tax~~] surtax imposed by this section
6 has not been paid. [~~The tax may be imposed at a rate not to~~
7 ~~exceed five percent, provided that any lower rate shall be an~~
8 ~~even multiple of one percent.~~] The [~~tax~~] surtax imposed [~~under~~]
9 pursuant to this section may be referred to as the "local
10 liquor [~~excise tax~~] surtax". Any [~~tax~~] surtax imposed [~~under~~]
11 pursuant to this section shall be for a period of not more than
12 three years from the effective date of [~~the ordinance imposing~~]
13 the [~~tax~~] surtax. Within the final year that the surtax is in
14 effect, the governing body may impose the surtax for another
15 three-year period, to begin in the month following the
16 termination of the surtax currently in effect, and submit the
17 question of the surtax to the voters of the county in the same
18 manner as was required to approve the original surtax.~~

19 B. The governing body at the time of enacting an
20 ordinance imposing the [~~tax~~] local liquor surtax authorized in
21 [~~Subsection A of~~] this section shall dedicate the revenue to
22 fund educational programs [~~and~~] for the prevention of and
23 treatment [~~of~~] for alcoholism and drug abuse within the county
24 and for no other purpose. After approval of the imposition of
25 a local liquor [~~excise tax~~] surtax by the voters but before the

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1 effective date of the ordinance, the governing body shall hold
2 a public meeting for the purpose of inviting comment on and
3 suggestions for the most appropriate programs on which to
4 expend the revenue produced by the [~~tax~~] surtax. The governing
5 body shall invite representatives from the appropriate Indian
6 [~~tribes~~] nations, tribes and pueblos located in New Mexico to
7 the meeting. If the governing body awards [~~any~~] a contract
8 using funds derived from the local liquor [~~excise tax~~] surtax,
9 it shall do so only through a selection process requiring
10 submission of sealed bids or proposals after public notice of
11 the opportunity to submit the sealed bids or proposals.

12 C. The governing body enacting an ordinance
13 imposing the local liquor [~~excise tax~~] surtax shall submit the
14 question of imposing the [~~tax~~] surtax to the qualified voters
15 of the county at a regular or special election.

16 D. Only those voters who are registered within the
17 county shall be permitted to vote. The election shall be
18 called, conducted and canvassed in substantially the same
19 manner as provided by law for general elections.

20 E. If at an election called pursuant to this
21 section a majority of the voters voting on the question [~~vote~~]
22 votes in the affirmative on the question, then the ordinance
23 imposing the local liquor [~~excise tax~~] surtax shall be
24 approved. If at such an election a majority of the voters
25 voting on the question [~~fail~~] fails to approve the question,

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1 then the ordinance shall be disapproved and the question
2 required to be submitted by Subsection [B] C of this section
3 shall not be submitted to the voters for a period of at least
4 one year from the date of the election.

5 F. [~~Any~~] An ordinance enacted under the provisions
6 of this section [~~which~~] that imposes a local liquor [~~excise~~
7 ~~tax~~] surtax or changes the rate of [~~tax~~] surtax imposed shall
8 include an effective date [~~which~~] that is the first day of any
9 month [~~which~~] that begins no earlier than ninety days after the
10 date of the election. A certified copy of any ordinance
11 imposing a local liquor [~~excise tax~~] surtax shall be mailed or
12 personally delivered to the department within five days after
13 the ordinance is certified to have been approved by the voters.

14 G. Any ordinance repealing the imposition of a [~~tax~~
15 ~~under~~] surtax pursuant to the provisions of this section shall
16 contain an effective date [~~which~~] that is the first day of any
17 month beginning no earlier than sixty days from the date the
18 ordinance repealing the [~~tax~~] surtax is adopted by the
19 governing body. A certified copy of any ordinance repealing a
20 local liquor [~~excise tax~~] surtax shall be mailed or personally
21 delivered to the department within five days of the date the
22 ordinance is adopted."

23 Section 6. Section 7-24-10.1 NMSA 1978 (being Laws 1992,
24 Chapter 35, Section 1) is amended to read:

25 "7-24-10.1. USE OF [~~TAX~~] SURTAX PROCEEDS--LOCAL LIQUOR

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1 ~~[EXCISE TAX]~~ SURTAX COMMITTEE--JOINT POWERS AGREEMENT--
2 COMMUNITY PARTICIPATION.--

3 A. Prior to ~~[the]~~ an election on the question of
4 imposing a local liquor ~~[excise tax]~~ surtax pursuant to the
5 provisions of the Local Liquor ~~[Excise Tax]~~ Surtax Act, the
6 governing body of a county shall enter into a joint powers
7 agreement with the governing body of the most populated
8 municipality and the governing bodies of any other
9 municipalities in the county that choose to be parties to the
10 agreement to provide for the use and administration of the
11 ~~[tax]~~ surtax proceeds. The agreement shall provide for the
12 establishment and appointment of a local liquor ~~[excise tax]~~
13 surtax committee to provide advice, assist in preventing
14 duplication and supplanting of program funding and make
15 recommendations to the governing body of ~~[a]~~ the county and the
16 municipal governing bodies that are parties to the agreement on
17 the use of the ~~[tax]~~ surtax proceeds and may include agreements
18 that:

19 (1) clearly specify the use of the proceeds of
20 the proposed local liquor ~~[excise tax]~~ surtax, including the
21 identification of specific local programs, agencies or entities
22 that will be funded from the ~~[tax]~~ surtax proceeds; and

23 (2) determine the allocation of election
24 expenses among the parties to the agreement.

25 B. Prior to ~~[any]~~ the agreement by the governing

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1 body of a county and the municipal governing bodies for use of
2 the [~~tax~~] proposed local liquor surtax proceeds, the local
3 liquor [~~excise tax~~] surtax committee established pursuant to
4 the [~~joint powers agreement in Subsection A~~] provisions of this
5 section shall conduct a public hearing for the purpose of
6 inviting public comment on use of the proposed local liquor
7 [~~excise tax~~] surtax proceeds. The committee shall make every
8 effort to provide public notice of the hearing and to invite a
9 broad cross-section of community representatives and groups to
10 comment on community needs. Following the hearing, the
11 committee shall make its funding recommendations to the
12 governing body of [~~a~~] the county and the municipal governing
13 bodies."

14 Section 7. Section 7-24-11 NMSA 1978 (being Laws 1989,
15 Chapter 326, Section 4) is amended to read:

16 "7-24-11. DATE PAYMENT DUE.--The [~~tax~~] surtax imposed by
17 the Local Liquor [~~Excise Tax~~] Surtax Act is to be paid on or
18 before the twenty-fifth day of the month following the month in
19 which the taxable event occurs."

20 Section 8. Section 7-24-12 NMSA 1978 (being Laws 1989,
21 Chapter 326, Section 5) is amended to read:

22 "7-24-12. EXEMPTION.--Exempted from the local liquor
23 [~~excise tax~~] surtax is the purchase of alcoholic beverages by
24 any instrumentality of the armed forces of the United States
25 engaged in resale activities."

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1 Section 9. Section 7-24-14 NMSA 1978 (being Laws 1989,
2 Chapter 326, Section 7) is amended to read:

3 "7-24-14. REFUND OR CREDIT OF [~~TAX~~] SURTAX.--An ordinance
4 imposing a local liquor [~~excise tax~~] surtax shall provide for
5 and the department shall allow a claim for refund, in
6 accordance with the provisions of the Tax Administration Act,
7 for the local liquor [~~excise tax~~] surtax paid on alcoholic
8 beverages destroyed in shipment or otherwise damaged so as to
9 be unfit for sale or consumption or shipped out of the county,
10 upon submission of proof satisfactory to the department of such
11 destruction, damage or out-of-county shipment."

12 Section 10. Section 7-24-15 NMSA 1978 (being Laws 1989,
13 Chapter 326, Section 8) is amended to read:

14 "7-24-15. ADMINISTRATIVE CHARGE.--The department may
15 deduct an amount not to exceed five percent of the proceeds of
16 a local liquor [~~excise tax~~] surtax as a charge for the
17 administrative costs of collection, which amount shall be
18 retained by the department for use in administration of the
19 Local Liquor [~~Excise Tax~~] Surtax Act."

20 Section 11. Section 7-24-16 NMSA 1978 (being Laws 1989,
21 Chapter 326, Section 9) is amended to read:

22 "7-24-16. INTERPRETATION OF ACT--ADMINISTRATION AND
23 ENFORCEMENT OF THE [~~TAX~~] SURTAX.--

24 A. The department shall interpret the provisions of
25 the Local Liquor [~~Excise Tax~~] Surtax Act.

